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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 31

PRIME HEALTHCARE SERVICES – ENCINO HOSPITAL, LLC D/B/A ENCINO HOSPITAL MEDICAL CENTER; PRIME HEALTHCARE SERVICES – GARDEN GROVE, LLC D/B/A GARDEN GROVE HOSPITAL AND MEDICAL CENTER; PRIME HEALTHCARE SERVICES – CENTINELA LLC D/B/A CENTINELA HOSPITAL MEDICAL CENTER, Respondents, and SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS – WEST Charging Party.	Case No. 31-CA-140827, *et al.* **SEIU, UHW – WEST'S POST-HEARING BRIEF**

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I. INTRODUCTION

While the sole legal issue in this case is whether Respondent Prime Healthcare Services ("Prime") violated Section 8(a)(5) of the National Labor Relations Act (the "Act") by refusing to execute an agreement that it had reached with SEIU, United Healthcare Workers – West ("UHW" or the "Union"), this case is really about integrity and responsibility. If anything, this case demonstrates that Prime, and its CEO, lacks integrity, fails to take responsibility, and cannot be trusted.

The facts are simple. On November 10, 2014, Prime reached a collective bargaining agreement with UHW, covering workers at three Prime hospitals. Satisfied that the parties had reached a complete agreement, and after a review of the agreement, Prime's CEO instructed Mary Schottmiller, his negotiator and Senior Labor Counsel, to execute the agreement. Schottmiller did as she was told. She contacted the Union, and arranged to sign the agreement.

Less than twenty-four hours later, Prime's CEO broke his word. Displaying a severe lack of integrity, Prime's CEO instructed Schottmiller to renege on the deal. The only reason for his about face was that he wanted to extort an agreement from UHW on another matter; and he believed that if he reneged on his agreement that he made less than twenty-four hours earlier, he would get what he wanted. Of course, all he ended up getting was an unfair labor practice charge and the stink of dishonesty.

In defending itself, Prime has raised specious arguments. Prime's CEO failed to testify and explain why he agreed and then reneged on his agreement. The hearing in this matter demonstrated the great lengths that Prime would go to avoid responsibility. First, Prime insinuated that its CEO never approved the agreement. Yet this suggestion turned out to be patently false, when one of Prime's own witnesses admitted that Prime's CEO had, in fact, approved the agreement. Next, Prime claimed that it didn't mean what it said, when it agreed to execute the agreement. This claim, however, is undercut by the mountain of evidence suggesting otherwise, including the fact that Prime's CEO instructed his negotiator and Senior Labor Counsel to sign the agreement. Finally, Prime argued that even if it did agree to sign the agreement, there really was

no agreement because there was no "meeting of the minds." This argument, like the others, holds no water. Prime raised this defense for the first time at the hearing. But even if one took this defense seriously, the undisputed evidence establishes that Prime reviewed the terms of the agreement, acknowledged that the terms accurately reflected what the parties had agreed to, and took other actions indicating that an agreement had been reached.

Prime's actions in this case were motivated by greed. For purely tactical and strategic reasons, Prime's CEO dangled in front of UHW members an agreement that would raise their wages and improve their benefits – only to snatch it away because he wanted to buy more hospitals. Some of these members have been without a contract for nearly five years. The Act requires that when one party gives its word that it has an agreement, it is obligated to reduce that agreement to writing. Prime gave its word, and should be required to live by it.

II. STATEMENT OF FACTS

A. OVER THE PAST FIVE YEARS, THE PARTIES HAVE BEEN NEGOTIATING SUCCESSOR AGREEMENTS COVERING CENTINELA, ENCINO AND GARDEN GROVE.

In 2007, Prime acquired Centinela, and then a year later acquired Encino and Garden Grove. (Tr. 253:22-23). Prior to Prime's acquisition of these hospitals, UHW had already been recognized as the exclusive representative at each of these facilities. After acquiring the facilities, Prime recognized UHW as the exclusive bargaining representative and assumed the collective bargaining agreements ("CBAs") that were in effect at the time of the acquisitions. (Tr. 254:2-12; *see also* Jt. Exhs. 14-16).

Upon the expiration of the assumed CBAs, UHW and Prime entered into successor negotiations. At Centinela, the parties started negotiating a successor agreement in December 2009. *See Prime Healthcare Centinela LLC d/b/a Centinela Hosp. Med. Ctr.*, 2103 WL 1561256 (Div. of Judges Apr. 12, 2013). Prime declared impasse and implemented its last, best and final offer in 2012.[1] *Id.* At Encino and Garden Grove, the parties have been bargaining for a successor

[1] After Prime declared impasse and unilaterally implemented its terms and conditions, UHW filed an unfair labor practice charge. A complaint was issued. Administrative Law Judge Gerald Etchingham found that Prime had, among other things, unlawfully declared impasse and unlawfully imposed terms and conditions of employment. *See Centinela*

agreement since 2011.[2] Needless to say, for the past five years, the relationship between the parties has been strained and contentious.[3]

B. PRIME ATTEMPTS TO BUY THE DAUGHTERS OF CHARITY HEALTH SYSTEM, AND SEEKS UHW'S SUPPORT FOR ITS BID BECAUSE UHW REPRESENTS WORKERS AT THE DAUGHTERS OF CHARITY.

In 2014, Prime attempted to acquire the Daughters of Charity Health System (the "Daughters"), which is comprised of approximately six facilities throughout California. (Tr. 60:1-12; 177:4-10; 177:19-20). UHW represents approximately 3,000 workers at the six Daughters facilities. (Tr. 60:17-22). Before Prime could actually acquire the facilities, the California Attorney General needed to approve the transaction. (Tr. 178:1-5). Because the transaction needed to be approved by the Attorney General, and through a public hearing process, opportunities existed for the general public, including members of UHW, to weigh in on the transaction. (Tr. 62:6-12).

According Joe Turzi, who at the time served as "[s]ort of a strategic consultant" to Prime, (Tr. 173:5), Prime wanted to negotiate a deal with UHW in order to successfully close the Daughters transaction. (Tr. 180:11-16). Prime wanted to reach a "global settlement" to resolve all of the issues between Prime and UHW and fix "really problematic labor terms in the Daughters' system, which made those systems not viable." (Tr. 180:14-16). Simply put, UHW's support of Prime's bid would have paved a smooth path toward Attorney General approval of the transaction. (*See* Tr. 62:6-16).

As a result, the Daughters facilitated several meetings between representatives of Prime and

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Hosp. Med. Ctr., 2013 WL 1561256 (Div. of Judges Apr. 12, 2013). Prime filed exceptions to the decision, and the matter is currently pending before the Board.

[2] Although Prime did not declare overall impasse at Encino or Garden Grove, like it did at Centinela, but Prime did unilaterally rescind various mandatory subjects of bargaining. *Garden Grove Hosp. & Med. Ctr.*, 357 NLRB No. 63 (2011) (finding that Prime violated the Act when it unilaterally rescinded a sick leave benefit); *Prime Healthcare Servs. Encino, LLC d/b/a Encino Hosp. Med. Ctr.*, 2014 WL 6808993 (Div. of Judges Nov. 13, 2014) (finding that Prime unilaterally discontinued anniversary wage increases).

[3] Prime has filed multiple lawsuits against the Union and even claimed that the Union has a "disabling conflict of interest" that prevents it from representing employees at Prime. *Prime Healthcare Servs., Inc. v. SEIU, et al.*, 2013 WL 3873074 (July 25, 2013) (granting Defendants' motion to dismiss Prime's Anti-Trust lawsuit); *Prime Healthcare Servs. Inc. v. SEIU, et al.*, 2015 WL 1499214 (Apr. 1, 2015) (dismissing Prime's RICO and LMRDA lawsuit); *Encino Hosp. Med. Ctr.*, 2014 WL 6808993 (Div. of Judges Nov. 13, 2014) (rejecting disabling conflict of interest claim).

UHW in an effort to resolve outstanding issues between the parties and gain UHW's support for Prime's bid to acquire Daughters. (Tr. 62:12-16).

C. PRIME AND UHW MEET AND REACH A COLLECTIVE BARGAINING AGREMENT COVERING CENTINELA, ENCINO, AND GARDEN GROVE, ABSENT A GLOBAL SETTLEMENT AGREEMENT.

Representatives of Prime and UHW met over a two and half week period between mid-October and November 2014. The purpose of the meetings was to attempt to reach an agreement concerning four big issues: (1) negotiating a labor peace agreement; (2) negotiating an agreement at Centinela, Encino, and Garden Grove (the "three hospitals") as well as negotiating a framework agreement for Daughters' workers; (3) negotiating an election procedure agreement; and (4) negotiating the resolution of litigation between the parties. (Tr. 183:2-14). These four big issues were covered in a proposal, known as the "global settlement agreement" or "MOU". (Tr. 183:22-25; Tr. 184:1-8). As Turzi testified, these four big issues were components of "one agreement. So, for example, the collective bargaining agreements were an appendix. Each of them were an appendix to the global agreement and they were referenced, and the global agreement said when they would take effect. The election procedure agreement was an appendix. . . . [And] the Daughters' master CBA" was also an appendix. (Tr. 184:3-10).

The component that is most relevant to the instant proceedings involved the CBA involving the three hospitals, Centinela, Encino, and Garden Grove. Early in the MOU negotiations, Prime proposed that the CBA covering the three hospitals would take effect sixty days after Prime's acquisition of Daughters, assuming that Prime could successfully acquire the health system. (Tr. 198:9-16). Prime proposed a similar time frame for the effective date of any new agreement that covered workers at Daughters. (Tr. 198:17-19).

UHW countered with a proposal that made the three hospitals agreement effective upon ratification. Turzi testified that as a result of this proposal, Prime countered with a "new section . . . that said, the only reason we're agreeing to those three, Encino, Garden Grove and Centinela, is because we – it's the economic benefits of the total package." (Tr. 205:8-12; Exh. 8). At this point in the MOU negotiations, Prime did not believe that UHW's counter-proposal made sense, because

it feared that if the CBAs for the three hospitals immediately took effect, and Prime did not ultimately acquire the Daughters, Prime would receive "none of the benefit of the bargain." (Tr. 211:11-17).

For Prime and Daughters, there was a sense of urgency to act quickly and reach an agreement on the MOU, because they believed that the Attorney General's approval of the Daughters transaction would happen during the week of November 2, 2014. (Tr. 379:21-24, 25; 380:1-5). The parties met in person on November 1 and 2 to discuss the MOU. (Tr. 231:8-11). Following this meeting, Prem Reddy, Prime's CEO, asked Turzi, who was not present at the meeting, to "memorialize an agreement" and to send UHW a "revised agreement."[4] (Tr. 232:3-7,12-13). Turzi sent the Union a "revised agreement" on November 6. (Resp. Exh. 8). The revised agreement did not accurately capture the discussion that took place on November 1 and 2. Given the level of urgency to get a deal done quickly, Conway Collis, a Daughters representative who served as a mediator, encouraged the parties to continue to meet and attempt to reach an agreement on the MOU; the parties agreed to meet, by telephone, on Friday, November 7. (Tr. 381:24-25; 382:1).

1. The November 7-8 Negotiations: One Last Attempt to Reach a Global Settlement Agreement.

Between mid-day on November 7 and the early morning on November 8, Reddy, Mike Sarian, Prime's President of Operations, Mary Schottmiller, Prime's Senior Labor Counsel, and Turzi participated in negotiations with UHW by telephone. Reddy, Sarian, and Schottmiller were gathered together in Prime's corporate offices in Ontario, California until at least midnight. (Tr. 382:1-25). Turzi participated by telephone from his office in Washington, D.C. (Tr. 382:18-20; 384:4-6). For most of the time on November 7, the negotiations focused on an arbitration provision in the MOU. (Tr. 385:10-17).

By 11:00 p.m. on November 7, the parties agreed to tackle other outstanding issues involving the MOU. (Tr. 385:23-25; 386:1). One of the issues the parties tackled on November 7

[4] Mary Schottmiller testified that she did not remember Turzi sending an agreement trying to capture what was agreed on November 1 and 2. (Tr. 379:4-7).

involved the master CBA covering workers at Centinela, Encino, and Garden Grove. The parties agreed that Schottmiller, representing Prime, and Greg Pullman, UHW's Chief of Staff, would work out the terms of an agreement covering the three hospitals. (Tr. 386:2-5).

Over the course of the next few hours, Schottmiller and Pullman negotiated the terms of a collective bargaining agreement that covered Centinela, Encino, and Garden Grove. Schottmiller preferred to negotiate by e-mail and wanted to put everything in writing to avoid any disagreements. (Tr. 386:13-25; Resp. Exh. 24). Schottmiller sent Pullman the first proposal of the night. (Resp. Exh. 24).

Schottmiller's proposal included a dozen or so issues that needed to be resolved in order to reach a CBA for the three hospitals. One of the issues included the elimination of the "California differential." The California differential covered only a subset of UHW represented workers at Centinela. (Tr. 416:19-25; 374; 375:1-4). Prime wanted to eliminate the California differential.

In response to Schottmiller's proposal, Pullman proposed to deal with the differential after the parties had reached an agreement. Prime, however, wanted the differential eliminated immediately upon implementation of the agreement. (Resp. Exh. 24). According to Schottmiller, Prime's motive for immediately eliminating the California differential had to do with wanting to wrap up everything at once; it had nothing, however, to do with any potential liability to Prime. (Tr. 387:23-25; 388:1-4).

According to Schottmiller, in response to Pullman, she "mistakenly" represented to him that the parties had already reached agreement on eliminating the California differential during a bargaining session on October 24. (Tr. 389:11-17). At the hearing, Schottmiller explained that she made the mistake because: the negotiations took place in the middle of the night; she had been "doing 20 negotiations at once"; and based on her memory, she had already explained what her proposal was to the Union on October 24, and she believed that the Union had agreed to it. (Tr. 389:21-23; 390:17-19).

By 2:18 a.m. on November 8, Schottmiller and Pullman concluded their negotiations and had reached a tentative agreement covering the Centinela, Encino, and Garden Grove bargaining

units. (Resp. Exh. 46). In the final version of the tentative agreement, the Union agreed to the immediate elimination of the California differential at Centinela. (Tr. 121:10-13; 128:6-7). The agreement was only tentative, however, because it was only one component of the MOU, and the parties had yet to reach an agreement on the MOU as a whole. At 3:35 a.m., Pullman e-mailed Collis and Schottmiller the final version of the tentative agreement for the three hospitals. (Resp. Exh. 47).

2. November 10, 2014: Prime Agrees to Execute an Agreement Covering Centinela, Encino and Garden Grove, Even Absent a Global Settlement Agreement.

On Monday, November 10, at 12:04 p.m., Schottmiller e-mailed Pullman, stating that Prime was "in agreement" with the three hospitals agreement that the parties had reached on November 7, "even absent a signed MOU." (Resp. Exh. 62 at p. 3). Schottmiller then inquired whether UHW was "ready to execute the CBAs this week." (*Id.*). Prior to sending her e-mail at 12:04 p.m., Schottmiller reviewed Pullman's e-mail from Saturday, November 7 and discussed it with Reddy, Sarian, and Schell.[5] (Tr. 405:12-19). During this discussion, Reddy instructed Schottmiller to sign the three hospitals agreement on November 10. (Tr. 421:1-3; Tr. 405:20-21). To UHW, this was welcomed news but a little surprising. Yet as Turzi, Prime's "strategic consultant," explained, after November 8, Prime had decided to "back away from the global MOU in terms of a requirement that there be a global settlement." (Tr. 213:21-25; 214:1-5).

After receiving Schottmiller's e-mail agreeing to execute the three hospitals agreement, even absent an MOU, Pullman responded to Schottmiller at 12:28 p.m., thanking her for the outreach and noting that UHW was "ready to execute the CBAs this week." (Resp. Exh. 62 at pp. 2-3). Pullman also told Schottmiller that if she wanted to discuss the agreement, she should call him. (*Id.*). Pullman attached the agreement covering the three hospitals to his e-mail. (Jt. Exh. 2 at 49-50).[6]

Schottmiller did not call Pullman but did review the attachment and determined that it

[5] At first, Schottmiller claimed that she could not remember reviewing the e-mail. (*See* Tr. 396:11-18).

[6] For joint exhibits, we have used the Bates numbers rather than the page number.

accurately reflected the parties' agreement. (Tr. 408:8-9). Schottmiller responded by e-mail, at 12:31 p.m., clarifying one point – namely, that any grievances "filed at any hospitals, even if they were not appealed to arbitration, need to be gone." (Jt. Exh. 2 at 43). Six minutes later, at 12:37 p.m., Pullman responded that UHW agreed and that he had "re-wrote that to make it clear." (*Id.*) Pullman then asked Schottmiller "if we can sign off on this document." (*Id.*). Pullman again attached the agreement for the three hospitals to his e-mail. (*Id.* at 50).

After receiving Pullman's e-mail, Schottmiller took her time and reviewed the attached agreement, term by term, and verified that the document accurately reflected the agreement that the parties had reached. (Tr. 410:1-22). At 12:41 p.m., Schottmiller e-mailed Pullman and stated, "We are good to go. I'm in negotiations today, so I will sign tomorrow. If you want to sign and send to me today, I can sign first thing tomorrow morning." (Jt. Exh. 2 at 43). Schottmiller also requested that Pullman cancel three days of negotiations that had been previously scheduled for Centinela, Encino and Garden Grove for the week of November 8. (*Id.*)

In light of the agreement, Pullman responded to Schottmiller that he would cancel the bargaining sessions for the week of November 8; and he explained that Richard Ruppert[7] would contact her to verify that the parties were implementing the correct wage scales to effectuate the terms of the new agreement. (Resp. Exh. 55; Tr. 106:2-4; 107:4-8).

At 3:32 a.m. on November 11, Schottmiller responded to an e-mail from Pullman, informing him that Prime was "running the numbers on the health care premiums and will send as soon as I get it." (Resp. Exh. 61). In the three hospitals agreement, Prime had agreed to reimburse health care premiums for Centinela employees. (Jt. Exh. 2 at 51).

3. November 11, 2014: Prime Reneges on its Deal and Refuses to Execute the Collective Bargaining Agreement Covering Centinela, Encino and Garden Grove.

At some point, between 3:32 a.m. and 12:41 p.m., on the morning of November 11, Schottmiller met with Reddy, Sarian, and Schell to discuss the three hospitals agreement. During

[7] Richard Ruppert led the negotiations for each of the three hospitals involved in this case, but did not participate in the negotiations that led to the November 10, 2014 agreement.

this conversation, Reddy did an about face and directed Schottmiller to refuse to sign the agreement. (Tr. 420: 4-10). The only reason, according to Schottmiller, that Reddy instructed her to refuse to sign the agreement was because he wanted the three hospitals agreement to be contingent on the overall Daughter's deal. (Tr. 420:9-12).

Also on the morning of November 11, at 8:39 a.m., Ruppert e-mailed Schottmiller in an effort to discuss the wage scales and California differential. (Resp. Exh. 59). In his e-mail, Ruppert noted that the parties had agreed to eliminate the California differential, and acknowledged that he had no authority to bargain anything further, noting that he was "not trying to bargain the settlement proposal but we both have to be clear on the CD settlement." (*Id.*).

At 12:41 p.m., Schottmiller had received an e-mail from Pullman, at 12:41 p.m., asking her why she had not yet signed and returned the agreement as promised (Jt. Exh. 4 at 59). Schottmiller responded to Pullman and explained that Prime "cannot sign the attached [three hospitals agreement] until we reach agreement on the Daughter's deal." (*Id*). Schottmiller then responded to Ruppert's 8:39 a.m. e-mail, without addressing the substance of it, instead stating that she had "just let Greg know that we cannot agree to the three contracts until we reach an agreement on the Daughters." (Resp. Exh. 59).

Immediately following Schottmiller's e-mail, the Union filed an unfair labor practice charge.

III. LEGAL ARGUMENT

A. PRIME REACHED A CBA COVERING CENTINELA, ENCINO, AND GARDEN GROVE WITHOUT ANY CONDITIONS, BUT THEN REFUSED TO EXECUTE THE CBA IN AN EFFORT TO FORCE UHW TO AGREE TO A SEPARATE CBA COVERING WORKERS EMPLOYED AT THE DAUGHTERS OF CHARITY HEALTH SYSTEM.

The sole issue in this case is whether Prime violated the Act when it broke its promise to execute a CBA that it negotiated, reviewed, approved, and agreed to sign on November 10, 2014. Section 8(d) of the Act requires "the execution of a written contract incorporating any agreement reached." This requirement also encompasses an "obligation to assist in reducing the agreement reached to writing." *Kennebec Beverage Co., Inc.*, 248 NLRB 1298 (1980). Therefore, because

Prime refused to execute, as well as failed to assist in incorporating the terms of, the three hospitals agreement that it had agreed to on November 10, Prime violated Section 8(a)(5) of the Act. *H.J. Heinz Co. v. NLRB*, 311 U.S. 514, 523-526 (1941).

When analyzing a case like the instant matter, "'the Board is not strictly bound by the technical rules of contract law when it decides whether, in the circumstances, the employer and the union have arrived at an agreement which must be reduced to writing and executed by the parties.'" *Ebon Servs.*, 298 NLRB 219, 223 (1990) (quoting) *Penasauitos Gardens, Inc.*, 236 NLRB 994 995 (1978). While the parties must have a "meeting of the minds" with respect to the substantive and material terms of the agreement, the term "meeting of the minds" does not require that both parties share an identical subjective understanding of the substantive and material terms of the agreement. *Windward Teachers Ass'n*, 346 NLRB 1148, 1150 (2006); *Ebon Servs.*, 298 NLRB at 223 (citing *Diplomat Envelop Corp.*, 263 NLRB 525, 536 (1982)); *Longshoremen ILA Local 3033 (Smith Stevedoring)*, 286 NLRB 798, 807 (1987)). Thus, "the subjective understandings or misunderstandings as to the meaning of terms which have been agreed to are irrelevant, provided that the terms are unambiguous judge by a reasonable standard." *Ebon Servs.*, 298 NLRB at 223; *Windward*, 346 NLRB at 1150 (noting that a disagreement involving the interpretation of a term does "not provide a defense to a refusal to sign a contract").

In this case, the parties reached an agreement on all substantive and material terms of the three hospitals agreement. Prime reviewed the agreement on multiple occasions, its CEO approved it, and instructed Schottmiller to execute it.

1. <u>On November 10, 2014, Prime's CEO and "ultimate decision maker" approved the three hospitals agreement, and instructed his lawyer to execute the agreement without any conditions.</u>

Throughout Prime's presentation of evidence, it suggested that Reddy, Prime's CEO and "the ultimate decision maker," had not agreed to enter into any agreement with UHW. To this end, Prime argued that even if Mary Schottmiller, Prime's negotiator and Senior Labor Counsel, had notified UHW of Prime's acceptance of the three hospitals agreement on November 10, 2014, she did not have the authority to bind Prime to that agreement. (Tr. 168:6-20). Only Reddy had the

authority to make an agreement with UHW, according to Prime, because he "was the ultimate decision maker." (Tr. 168:6-7). And since Reddy allegedly had not agreed to any deal with UHW, Prime argued that it did not violate the Act because the Union failed to gain the requisite approval of Reddy – "the ultimate decision maker." (*Id.*).

This narrative, of course, turned out to be completely false.[8] During cross-examination, Schottmiller testified that before she notified anyone at UHW that Prime would accept the three hospitals agreement, "even absent a signed MOU," she discussed the tentative agreement with Reddy, Sarian, and Schell. (Tr. 405:12-19). During this discussion, Reddy – the "ultimate decision maker" – instructed Schottmiller to sign the agreement. (Tr. 421:1-3; Tr. 405:20-21). Following Reddy's direction, at 12:04 p.m. on November 10, Schottmiller sent an e-mail to Pullman, copying Sarian and Schell, stating that Prime was "in agreement" with the three hospitals agreement that the parties had reached on November 7, "even absent a signed MOU" and asking if UHW was "ready to execute the CBAs this week." (Resp. Exh. 62 at p. 3). Thus, contrary to the intentionally misleading narrative put forth by Prime, the evidence establishes that Reddy – the "ultimate decision maker" and highest authority within the company – made the decision to enter into the three hospitals agreement and instructed Schottmiller to effectuate the execution of the agreement.[9]

In its brief, Prime may argue that Schottmiller and Reddy had a "miscommunication" regarding his instruction to notify UHW that Prime was agreeable to the three hospitals agreement, absent any conditions.[10] (Resp. Exh. 62 at p. 3). Yet any suggestion of the sort is undercut by the

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[8] Prime and its counsel intentionally misled the Administrative Law Judge ("ALJ"), and intentionally put forth a misleading defense. (*See* Tr. 168:6-20; *see also* Tr. 357:15-25; 358:1-3). They knew or should have known that Reddy had authorized Schottmiller to enter into an agreement with UHW. Despite this knowledge, they intentionally denied this fact, causing delay and unnecessary litigation regarding the issue of Schottmiller's authority. While it is true that this proceeding is adversarial in nature, the nature of the proceeding should not give a party or its counsel license to intentionally misrepresent a material fact to the ALJ and the other parties to proceeding.

[9] Given that the undisputed evidence demonstrates that Reddy authorized Schottmiller to enter into an agreement with UHW, there is no need to analyze whether Schottmiller had the authority, on her own, to enter into the three hospitals agreement. At the hearing, Schottmiller conceded that she also had the authority to bargain contracts. (Tr. 368:25; 369:1-2).

[10] On cross-examination, Schottmiller refused to be responsive to the question of whether Reddy had reversed his position on signing the contract, suggesting that maybe she and Reddy just "had a miscommunication." (Tr. 420:13). Yet this suggestion is incompatible with Prime's other defense – namely, that *UHW* incorrectly assumed what

actual evidence presented at the hearing. First, as Turzi, who served as Prime's "strategic consultant," explained, Prime had decided to "back away from the global MOU in terms of a requirement that there be a global settlement" after November 8. (Tr. 213:21-25; 214:1-5). Given Turzi's testimony, it is rational that Prime would have agreed to a contract solely for the three hospitals, absent any conditions.

Moreover, even though Sarian and Schell did not testify, their action (or lack of action) speaks volumes, indicating that they too had the same understanding as Schottmiller did with respect to Reddy's instruction to execute the three hospitals agreement, absent any conditions. After receiving direction from Reddy, Schottmiller e-mailed Pullman, copying Sarian and Schell, agreeing to the three hospitals agreement, "even absent a signed MOU," and asking whether UHW was "ready to execute the CBAs this week." (Jt. Exh. 2 at 44). Neither Sarian nor Schell replied to this e-mail or objected to it in any way. Thirty-seven minutes later, Schottmiller sent an e-mail to Pullman, again copying Sarian and Schell, stating that "We are good to go. I'm in negotiations today, so I will sign tomorrow. If you want to sign and send to me today, I can sign first thing tomorrow morning." (Jt. Exh. 2 at 43). Again, neither Sarian nor Schell replied to this e-mail, objected to it in any way, or attempted to correct any "misunderstanding" communicated by it.

Finally, Prime presented no evidence that Schottmiller misunderstood Reddy's direction, and, therefore, acted without authority. If Schottmiller and Reddy truly had a "miscommunication," then, at the very least, one would think that either Sarian, who serves as Prime's President of Operations, or Schell, who serves as Prime's general counsel, would have corrected the misunderstanding immediately. But they did not. The record is devoid of any evidence suggesting that Schottmiller misunderstood Reddy's instruction.

Furthermore, even though Reddy, Sarian, and Schell participated in the discussion where Reddy instructed Schottmiller to accept and execute the agreement, neither Reddy, Sarian or Schell

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Schottmiller agreed to on November 10, 2014 and "took the absent MOU language from Ms. Schottmiller's email and then assumed it was a standalone agreement for three hospital CBAs." (Tr. 169:13-15) If it was *UHW* that misunderstood Schottmiller's November 10 proposal, then what is the miscommunication between Schottmiller and Reddy that she was referring to? If Schottmiller meant what she wrote, but UHW misunderstood it, then it means that Reddy and Schottmiller did not have a miscommunication.

testified in the instant matter. The only reasonable inference that can be drawn from their failure to testify is that, if called to testify, they would have testified that Reddy indeed instructed Schottmiller to accept and execute the agreement without any conditions.

Simply put, the undisputed evidence establishes that Primes' CEO and "ultimate decision maker" instructed his negotiator and Senior Labor Counsel to enter into and execute the three hospitals agreement without any conditions.

2. On November 11, 2014, Primes' CEO and "ultimate decision maker" instructed his lawyer to refuse to execute the three hospitals agreement for the sole purpose of extorting from the Union a separate agreement covering workers at Daughters.

A day after instructing Schottmiller to accept and execute the three hospitals agreement, Reddy did an about face. (Tr. 420: 4-10; 421:4-8). According to Schottmiller, the only reason that Reddy instructed her to refuse to sign the agreement was because he had changed his mind and now wanted the three hospitals agreement to be contingent on a Daughters' deal. (Tr. 420:7-10; 421:9-12). In furtherance of Reddy's about face, Schottmiller notified Pullman that Prime "cannot sign the attached [three hospitals agreement] until we reach agreement on the Daughters' deal." (Jt. Exh. 4 at p. 59). Schottmiller also confirmed with Ruppert that the only reason that Prime refused to execute the agreement was because they now wanted an agreement on the "[daughter's] deal." (Resp. Exh. 59).

There is no dispute that Prime notified UHW that it was refusing to execute an agreement that only a day earlier it had agreed to sign "first thing tomorrow morning." (Jt. Exh. 2 at 43). Prime, however, argues that it did not actually renege on any deal. Instead, Prime claims that Schottmiller's e-mail, notifying UHW that Prime would not sign the three hospitals agreement, served only to correct an incorrect assumption made by UHW – namely, UHW's belief that the phrase, "even absent a signed MOU," meant that Prime had agreed to "a standalone agreement for [the] three hospital CBAs." (Tr. 169:13-15). This is why Schottmiller, according to Prime, "corrected" the Union "when she realized the error." (Tr. 169:15-17). Schottmiller's "correction" consisted of two e-mails: One she sent to Pullman notifying him that Prime would not sign the

agreement until the parties reached an agreement on the Daughters' deal, the other explaining that she only "said absent a 'MOU'." (Jt. Exh. 4 at 58-59).

In his opening statement, counsel for Prime insinuated that the evidence would demonstrate that an agreement for Centinela, Encino, and Garden Grove was "never intended to be entered into *just* for the three hospitals. From the beginning," he claimed, "these global negotiations were always intended as an all or nothing deal. The different components were inextricably intertwined with one another." (Tr. 164:8-16). Because Prime never intended to enter into an agreement just for the three hospitals and the "different components were inextricably intertwined with one another," according to Prime's logic, when Schottmiller wrote, "even absent a signed MOU," she really meant that the three hospitals agreement was contingent on the Daughters' deal. This line of reasoning is so twisted that Prime should receive a gold medal for its legal gymnastics.

It simply defies logic to suggest, as Prime does here, that Schottmiller's acceptance of the three hospitals agreement, on November 10, was contingent upon reaching an agreement on the Daughters' deal; and that UHW incorrectly assumed otherwise. Schottmiller's own words and actions indicate that she accepted the three hospitals agreement and agreed to execute it without any condition.

While Prime may have initially wanted "an all or nothing deal" when negotiations started in October 2014, Prime clearly changed its position by November 10. By deliberately using and carefully choosing the phrase "even absent a signed MOU," Schottmiller communicated to Pullman that Prime was agreeing to *just* the three hospitals agreement. There is no other way to read this phrase. The MOU contained all of the components of the original deal. "[A]bsent the MOU," can only mean that Prime was agreeing to the three hospitals agreement, on its own, not conditioned on the other components of the MOU. If Schottmiller, a seasoned negotiator[11] and Prime's Senior Labor Counsel, meant to condition the three hospitals agreement on the Daughters' deal, or any other component of the MOU, she could have simply wrote that, but she did not because that is not what she intended.

[11] Schottmiller was a seasoned negotiator, and would have chosen her words wisely. She had negotiated dozens of the contracts. This was not her first rodeo. (Union Exhs. 1-5).

Indeed, when Schottmiller e-mailed Pullman on November 10, accepting the agreement, "even absent a signed MOU," she was following Reddy's instruction to agree to and execute the three hospitals agreement without any conditions. At the hearing, Schottmiller confirmed as much when she testified that she understood that as of November 10 the parties "had an agreement," and that she "had been given the green light to sign off [on it] by Dr. Reddy, Mike Sarian and Troy Schell." (Tr. 408:10; 411:8-11).

The material facts are not in dispute: An agreement was reached on November 10, Prime's CEO approved it, without any conditions, and he authorized his negotiator and Senior Labor Counsel to execute it. Accordingly, Prime violated the Act when it failed and refused to execute the three hospitals agreement.

3. Prime and UHW agreed to all of the material terms of the three hospitals agreement, and Prime never suggested that the Parties failed to reach a "meeting of the minds" with respect to any term of the agreement, until the hearing in this matter.

Prime's approach to this case has been to throw everything but the kitchen sink into its defense. This approach is best illustrated by Prime's claim that parties did not have a "meeting of the minds" with respect to the California differential. Prime never raised any issue with UHW regarding the differential in 2014. The first time Prime ever raised this defense was at the hearing in this matter. Prime's specious claim should be rejected for multiple reasons.

First, Prime and UHW reached a complete agreement on November 10, 2104; and the parties understood that they had reached an agreement on all substantive and material terms. Schottmiller acknowledged as much at the hearing. (408:10; 411:8-11). The Board has noted that the "tone and temperament of the parties" can be indicative of a complete agreement. *Windward*, 346 NLRB at 1150-51 (citing *Brooks, Inc. v. ILWU*, 835 F.2d 1164, 1169 (6th Cir. 1987)). Here, Schottmiller's own words, forever captured in e-mail, clearly indicate that the parties had reached a complete agreement. Schottmiller's actions confirm the same as well. As late as 3:32 a.m. on November 11, Schottmiller had notified Pullman that Prime was "running the numbers on the healthcare premiums" that were to be reimbursed pursuant to the agreement. (Resp. Exh. 61).

Second, and more importantly, in order to accept Prime's argument, one must ignore the fact that prior to agreeing to sign the agreement, Schottmiller read over the proposed agreement, term by term, on multiple occasions. (410:1-22). In *Ebon Servs.*, a case that closely resembles the instant matter, the employer "refused to sign a contract in part on certain real and alleged discrepancies between terms that had been discussed . . . and terms contained in the contract presented by the Union." 298 NLRB at 219, fn.2. The Board rejected the employer's defense that there was no "meeting of the minds," because the employer's vice president "reviewed all the terms of the contract . . . and agreed to sign it." *Id.*; *see also Windward*, 346 NLRB at 1151 (rejecting employer's "meeting of the minds" defense, because the employer admitted to reviewing the disputed language on multiple occasions, "and never once disputed its accuracy" during its review).

In this case, Prime's negotiator and Senior Labor Counsel reviewed the proposed agreement, term by term, on multiple occasions, and at the direction of Prime's CEO, agreed to execute it. After one review, Schottmiller even suggested clarifying one of the provisions, which UHW did. (Jt. Exh. 2 at 43). Schottmiller then reviewed the agreement again, term by term, and did not raise any objections regarding the California differential. (Tr. 410:1-22). In fact, not once during any of her multiple reviews of the agreement did Schottmiller suggest that the term dealing with the California differential was in any way inaccurate. Simply put, Prime agreed that the terms accurately reflected the parties' agreement; and, thus, there is no justification for Prime to have refused to sign the agreement.

Third, the *real* reason that Prime refused to the sign the agreement had nothing to do with the term dealing with the California differential. As Schottmiller explained to Pullman, and reconfirmed through her testimony, the *only* reason that Prime refused to sign the agreement was because Reddy, Prime's CEO, wanted to condition the three hospitals agreement on the "Daughters' deal."[12] (Jt. Exh. 4 at 59). *See Ebon Servs.*, 298 NLRB at 224 (rejecting meeting of

[12] Oddly, Prime claims that this also proves there was no agreement. But as the Court of Appeals for the Fifth Circuit noted, whether the charge is characterized as a refusal to execute an agreement or an attempt to condition the agreement on a non-permissive subject of bargaining, "the two characterizations are no more than two sides of the same coin." *NLRB v. Longshoreman*, 443 F.2d 218, 220 (5th Cir. 1971), *enf'g* 181 NLRB 590 (1970).

the minds argument where the evidence was "clear that Respondent's refusal to execute the contract did not hinge . . . [on] any . . . discrepancies"). Prime has manufactured the very idea that there was no "meeting of the minds" in order to avoid liability in this matter.

Even if one assumed, for the sake of argument, that the reason Prime refused to execute the agreement was because of the California differential, Prime still violated the Act. The duty to execute an agreement under Section 8(d) includes "the obligation to assist in reducing the agreement reached to writing." *See Kennebec Beverage Co., Inc.*, 248 NLRB 1298, 1298 and fn. 3 (1980) (holding that employer violated Act by refusing to execute agreement, because the employer "neither informed the Union that . . . .[the provision] varies from the agreement reached or in any other manner attempted to comply with its duty to assist in reducing such agreement to writing," even though the agreement contained a wage provision that varied from the agreement reached by the parties).

Here, like the employer in *Kennebec*, Prime neither informed UHW nor attempted to assist in clarifying the California differential language that it now objects to. Instead, on multiple occasions, Schottmiller reviewed and approved the California differential term without raising any objections. And when Ruppert contacted Schottmiller, by e-mail, Schottmiller failed to raise any issue with the California differential, but simply stated to Ruppert that she had already informed Pullman that Prime could not sign the agreement until the parties agreed to the Daughters' deal. (Resp. Exh. 59). Whether or not the term *now* varies from what Prime thought it agreed to is irrelevant, because Prime approved the language. Thus, if Prime believes that a disagreement exists with respect to the meaning of the California differential term – which accurately reflects what Prime agreed to – such disagreement does not relieve Prime of liability in this matter. *Windward*, 346 NLRB at 1152 ("It is well settled that where parties have reached agreement on the specific terms of a contract, subsequent disagreement over the meaning of those terms does not excuse a refusal to execute the agreement."); *see also Graphic Communications Dist. 2 (Riverwood Int'l USA)*, 318 NLRB 983, 992-93 (1995); *Teamsters Local 617 (Christian Salveson)*, 308 NLRB 601, 603 (1992).

Fourth, despite Prime's claim that the California differential was a material term of the agreement, the record indicates otherwise. The California differential impacted only a subset of employees at Centinela hospital, and in no way impacted employees at either Encino or Garden Grove. (Tr. 416:19-25; 374; 375). Moreover, despite Prime's counsel's repeated suggestion that the California differential was a "material term" because Prime wanted to avoid potential liability, Schottmiller testified that her goal in negotiations was not to avoid liability but to avoid having to negotiate an end to the differential post-contract settlement. (Tr. 387:23-25; 388:1-4).

Fifth, even if the California differential is a substantive and material term, Prime has not articulated why there is no "meeting of the minds" with respect to the California differential term, beyond suggesting that Ruppert's e-mail demonstrates that the parties still had not reached a resolution on this issue. This argument ignores the bargaining history. The bargaining history demonstrates that Prime wanted the California differential eliminated at Centinela with the settlement of the contract, and that UHW agreed to eliminate it. (*See* Resp. Exh. 88 at p. 13). This much should not be in dispute. The evidence also establishes that Pullman, relying on Schottmiller's representation, agreed to accept Prime's October 24 proposal on the California differential. (Jt. Exh. 2 at 10; Resp. Exh. 46).

But, most critically, Schottmiller never raised any issue with respect to the California differential. When Ruppert contacted Schottmiller, by e-mail, he expressly noted that he had no authority to negotiate over the differential issue but only wanted to make sure the wage scales properly reflected the agreement made by Pullman regarding the California differential. (*See* Resp. Exh. 59). If Schottmiller believed that there was a "misunderstanding" after receiving Ruppert's e-mail, Schottmiller, on behalf of Prime, had a duty to point it out to Ruppert or discuss it with Pullman, who negotiated it, in order to reduce to writing the actual agreement of the parties. *See Kennebec Beverage Co., Inc.*, 248 NLRB at 1298. Given the bargaining history and documentary evidence, coupled with Schottmiller's multiple reviews of the agreement, it is clear that Prime understood what it was agreeing to when Schottmiller agreed to execute the agreement on November 10, 2014.

Finally, Prime argued that there is simply no contract because Schottmiller made a good-faith "mistake" about the California differential. This argument is specious at best, and should be rejected. The Board has rejected similar types of arguments in the past. *See, e.g.*, *Windward*, 346 NLRB at 1151 (overruling ALJ and finding that Union violated the Act when it failed to execute an agreement, even though the Union claimed to have made a "mistake" as a result of a "good-faith oversight"). As the Board has explained, "'[a] party to a contract cannot avoid it on the ground that he made a mistake where the other contractor has no notice of such mistake and acts in perfect good faith.'" *Id.* (quoting *North Hills Office Servs.*, 344 NLRB 523, 528 (2005)). Put another way, "[a] contracting party's error, even if made in good faith, does not excuse its refusal to execute a collective bargaining agreement unless the error constitutes a legally cognizable mutual or unilateral mistake." *Id.* Additionally, when determining whether to nullify an agreement on the basis of a mistake, the Board will examine the conduct of the party that is claiming the mistake. *See id.* (finding that "Respondent's conduct gave every reason to suppose that the bonus language reflected the parties' exact agreement").

In *Windward*, the Board did not find a "legally cognizable mutual or unilateral mistake" because the agreement – like the agreement in this case – reflected exactly what the parties had agreed to, and the respondent – like Prime in this case – had reviewed the disputed term several times without objecting to the language. *Id.* The Board also noted that respondent's conduct gave the charging party "every reason" to believe that the language "reflected the parties' exact agreement." *Id.* Here, Prime gave UHW "every reason" to believe that it had an agreement. After all, it was Prime that reached out to UHW agreeing to the terms, even absent an MOU.

Furthermore, Prime's negotiator and Senior Labor Counsel reviewed the agreement several times, clarifying at least one term; Prime's CEO made the decision to enter into the agreement after Schottmiller's review; Prime failed to raise any concern regarding the California differential, even though it had plenty of opportunities to do so; Prime requested that previously scheduled bargaining sessions with UHW's committee be cancelled as a result of the parties reaching an agreement; and the only reason stated for refusing to execute the agreement was that Prime wanted

to make the agreement contingent on the Daughters' deal.

Given counsel for Prime's repeated assertions that Prime never intended to agree to a standalone agreement covering the three hospitals, it is probable that Reddy, in his own mind, had no actual intent of signing an agreement with UHW.[13] But as the ALJ in *Ebon Servs.* noted, "this is not determinative. What is significant is that he manifested his intent to the Union to execute the contract, made no reservations or conditions." 298 NLRB at 225. The suggestion that Prime should be excused from entering into a contract with UHW because of a "mistake" made by Schottmiller flies in the face of the overwhelming amount of evidence presented at the hearing evincing only one conclusion: That the parties, by and through their conduct, had reached a full agreement. "[A]ny mistake that was made was one of strategy, or tactics, based upon facts known to both parties. A strategy which misfires does not nullify a meeting of the minds." *Id.* (quoting *Local 3033*, 286 NLRB at 807)).

B. THE UNION SHOULD BE AWARDED SPECIAL REMEDIES.

1. Bargaining Costs.

As a result of Prime's bad faith bargaining conduct, UHW should be awarded bargaining costs beginning from November 10, 2014, the date that Schottmiller e-mailed Pullman agreeing to accept to three hospitals agreement, even absent the MOU, to present. A remedy granting bargaining costs to UHW is supported by Prime's egregious conduct, which contaminated the core of the bargaining process to such an extent that traditional remedies simply cannot eliminate the toxicity of Prime's conduct. *See Unbelievable, Inc.*, 318 NLRB 857, 859 (1995); *Whitesell Corp.*, 357 NLRB No. 97, slip op. at 5 (Sept. 30, 2011); *Fallbrook Hosp. Corp.*, 360 NLRB No. 73, slip. op. at 2 (Apr. 14, 2014).

Here, Prime's bad faith conduct was egregious. Prime reached out to UHW, proposing to resolve the three hospitals agreement without any conditions. UHW committed resources to

[13] We, of course, having no way of knowing what Reddy thought, because he did not testify as a witness. Given his failure to testify, the ALJ should draw the inference that if he testified, he would have confirmed that he ordered Schottmiller to agree to execute the agreement that the parties reached on November 10, 2014, only to renege on the agreement a day later in an effort to extort UHW into agreeing to a Daughters' deal. Or as Mary Poppins might say, he would've had to admit that he made a "pie-crust promise: easily made, easily broken."

finalizing the agreement, ratifying the agreement and implementing the agreement. After reaching a deal, UHW cancelled bargaining sessions at the request of Prime. Prime's whole course of conduct was calculated to extort an agreement covering workers at Daughters, a group of workers that were not even employed by Prime. Reddy was never interested in bargaining in good faith for a contract covering the three hospitals that he owned; he only agreed to a deal covering the three hospitals so that he could extort from UHW a deal covering Daughters. As such, Prime's conduct was an abuse of the bargaining process.

In addition, despite the numerous bargaining violations against Prime, including the fact that an ALJ has found that Prime unlawfully declared impasse and unilaterally implemented its last proposal on Centinela employees, Prime continues to engage in tactics that undermine and thwart the bargaining process.

2. Litigation Expenses.

The General Counsel and UHW should be awarded litigation expenses because Prime's defense was frivolous and without merit. The conduct that led to UHW filing the charge spilled over to the hearing on this charge. At the hearing, Prime repeatedly misrepresented material facts and this behavior constituted bad faith. The Board has awarded litigation expenses where, as here, a party raises frivolous defenses or its conduct of the litigation manifests bad faith. *See HTH Corp.*, 361 NLRB No. 65, slip op. at 3-4 (Oct. 24, 2014) (awarding litigation expenses in the face of pervasive, repeated, and unremedied violations); *Camelot Terrace*, 357 NLRB No. 161, slip op. at 4 (Dec. 30, 2011) (awarding litigation expenses for, among other things, for relying on "transparently nonmeritorious defenses"); *Teamsters Local 122*, 334 NLRB 1190, 1193 (2001) (awarding litigation expenses for conducting wasteful cross-examination and failure to mount any real defense); *see also Alwin Mfg. Co.*, 326 NLRB 646, 647 (1998) (awarding litigation expenses because party exhibit bad faith conduct in conduct of litigation), *enf'd by*, 192 F.3d 133 (D.C. Cir. 1999).

The issue in this case does not turn on credibility, so the resolution of this case does not depend on the conflicting testimony. Prime's actions either violated the Act or did not violate the

Act, as a matter of law. In an effort to convince the ALJ that it did not violate the Act, Prime disingenuously argued that only Reddy had the authority to make a deal with UHW, and called two witnesses to proffer such evidence. Based on this evidence, the explicit suggestion was that Schottmiller did not have the authority to make a deal with UHW. This, of course, turned out to be completely false, since Reddy instructed Schottmiller to accept and execute the agreement without any conditions. (Tr. 405:12-19).

Prime's other defenses were equally frivolous. Prime's claim that there was no agreement because Schottmiller only said "absent an MOU" and not "absent the Daughters' deal" is absurd and defies logic. In addition, Prime's claim that there was not an agreement, because Schottmiller made a mistake is equally frivolous. As an initial matter, in order to accept this argument, one would have to accept that Schottmiller indeed had authority to negotiate the agreement, which Prime vigorously disputed at the hearing. But, more importantly, one would have to ignore the mountain of evidence that demonstrates that the parties reached an agreement, and that Prime simply refused to sign the agreement because Reddy wanted to force UHW into agreeing to a deal for Daughters.

Prime's abuse of the subpoena process also supports an award of litigation expenses. Prime's subpoena for documents sought not only privileged information, Section 7 protected material, but also totally and completely irrelevant material, like communications between UHW and the California Attorney General. Prime did not even bother to offer into evidence the one document that was produced by the Union.

Finally, Prime's history of repeated bad faith bargaining is a militating factor in favor of an award of litigation expenses. *See*, *supra*, fns. 1-2.

Accordingly, UHW requests that Prime reimburse the General Counsel and the Union for costs and expenses incurred in the investigation, preparation, presentation, and conduct of the present proceeding before the Board, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses and per diems, and other reasonable costs and expenses.

3. Public Notice Reading.

A public notice reading is appropriate here, because the alleged unfair labor practices are pervasive and outrageous, and go to the core of the collective bargaining process; and the public notice reading should be read by Prem Reddy – Prime's "ultimate decision maker" – in order to fully remedy the coercive effects of Prime's unfair labor practices and Reddy's decision to break his promise. *See Federated Logistics & Operations*, 340 NLRB 255, 258 (2003) (citing *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995)).

IV. CONCLUSION

For the foregoing reasons, UHW respectfully requests that the ALJ find that Prime violated Section 8(a)(1) and 8(a)(5) of the Act by refusing and failing to execute a written agreement that it reached with UHW on November 10, 2104; and, along with traditional remedies, award special remedies in order to effectuate the policies of the Act.

Dated: October 16, 2015

WEINBERG, ROGER & ROSENFELD
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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On October 16, 2015, I served the following documents in the manner described below:

SEIU, UHW – WEST'S POST-HEARING BRIEF

X (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

X (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from rfortier-bourne@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 16, 2015, at Alameda, California.

Rhonda Fortier-Bourne